


The seal of the U.S. Bankruptcy Court, Northern District of Georgia, is a circular emblem. It features an eagle with spread wings perched atop a shield with vertical stripes. Above the eagle's head is a sunburst. The words "U.S. BANKRUPTCY COURT" are inscribed in the upper arc, and "NORTHERN DISTRICT OF GEORGIA" is inscribed in the lower arc.


Paul W. Bonapfel
U.S. Bankruptcy Court Judge

IN RE:

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CASE NO. 06-62966-PWB

WILLIAM F. PERKINS, in his capacity as Plan Trustee of International Management Associates, LLC, and its affiliated debtors,

ADVERSARY PROCEEDING
NO. 10-6090

AMERICAN INSURANCE SPECIALTY
LINES INSURANCE COMPANY; NASDAQ
OMX GROUP, INC.,

**ORDER ON MOTION FOR PROTECTIVE ORDER OF
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY**

Before the Court is the issue of whether to impose sanctions upon Defendant American Insurance Specialty Lines Insurance Company (“AISLIC”) to reimburse Plaintiff, Plan Trustee for International Management Associates, LLC, for legal fees incurred in opposing Defendant’s motion for protective order. In its Order entered on April 19, 2011 [73], the Court denied the motion for a protective order filed by AISLIC with regard to Plaintiff’s efforts to take a second deposition of AISLIC pursuant to FED. R. CIV. P. 30(b)(1), *applicable under* FED. R. BANKR. P. 7030. Noting, among other things, the Plaintiff’s allegations that AISLIC itself had suggested that Plaintiff seek the Rule 30(b)(6) deposition that AISLIC sought to prevent, the Court ordered AISLIC to respond to the Trustee’s request for attorney’s fees in connection with opposing the motion.

AISLIC’s response asserts that its motion was “substantially justified” because the Plaintiff could not have proceeded with the second deposition without leave of court and because it had a legitimate position that the Plaintiff’s discovery involved an event that never took place. Further, AISLIC disputes the Trustee’s allegation that AISLIC suggested the second Rule 30(b)(6) deposition.

Plaintiff’s reply to AISLIC’s response characterizes the motion for protective order as frivolous, asserting that AISLIC sought only to prevent Plaintiff from taking a standard deposition related to one of AISLIC’s key defenses. Plaintiff argues pursuant to FED. R. CIV. P. 37(a)(5)(b) that AISLIC should compensate Plaintiff for fees and expenses incurred in opposing the motion.

AISLIC’s invocation of the “second deposition” rule in the circumstances strikes the Court as technical gamesmanship. Its position that the Plaintiff sought discovery with regard to an event that did not occur is plausible but, as the Court’s previous ruling demonstrates, difficult to sustain as a basis for denying discovery.

On the other hand, the Plaintiff did face a requirement of leave from the Court to take the

second Rule 30(b)(6) deposition and did not seek it. And instead of simply making the case for the requested discovery, the Plaintiff escalated the controversy with a prayer for attorney's fees.

The Court is disappointed that the parties or their counsel chose to litigate a discovery dispute that the lawyers should have resolved with little effort, thereby wasting the time and resources of the parties, their counsel, and the Court. The Court would have expected more professionalism.

Although it is tempting to consider sanctioning both sides, doing so would not serve any purpose other than to prolong the dispute and potentially create more discord. Because Plaintiff failed to seek leave of Court as required by Rule 30(a)(2)(A)(ii) for a second Rule 30(b)(6) deposition, sanctions against Defendant are not appropriate.

Plaintiff's request for attorney's fees is dismissed.

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